IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

WRIT PETITION NO. 556 (SS) OF 2004

Ganga Ram, S/o Bhole Singh,
Working as Beldar in Regular Establishment,
P.W.D., Rudrapur, Udham Singh Nagar.

.....Petitioner.

Versus

1. Executive Engineer P.W.D., Rudrapur Udham Singh Nagar.
2. Superintandent Engineer P.W.D., Rudrapur Udham Singh Nagar
3. Assistant Engineer, P.W.D., Rudrapur Udham Singh Nagar.
4. Engineer in Chief, P.W.D., Dehradun, Uttaranchal.

.....Respondents.

Sri S.S. Yadav, Advocate for the petitioner.
Learned Standing Counsel for the respondents no. 1 to 4.

Dated: 22.02.2006

Hon'ble Rajesh Tandon, J.

By the present writ petition, the petitioner has prayed for a writ of Mandamus directing the respondents no. 1 and 4 to take decision in respect of work charge employee/petitioners regarding the counting of rendered service in work charge period and direct to fix the pensionery benefits treating the petitioner having served in full length of service.

2. Brief facts giving rise to the present writ petition are that the petitioner was initially appointed in 1983 in the office of concerned respondent department. The service of the petitioner was regularized in Work Charge Establishment by the respondents on 24.02.2003.

3. The date of birth of the petitioner is 20.03.1944 and the petitioner has retired from service.

4. The grievance of the petitioner is that his regualrization was made so late, therefore, as per rules his service has not been qualified for the pensionery benefits.

4. A counter affidavit has been filed by the State. Paragraphs C and 6 of the same are quoted below:-

"C. *That as the petitioner from the year 2003 till 2005 shall be completing 1 year and 21 days of service, as such, he is not eligible for the pension in pursuance of the Government Order dated 1-7-1989 by which at least 10 years regular service is required for the payment of pension. True copy of the Government Order dated 1-7-89 and 26-8-89 are being annexed herewith and marked as* ***ANNEXURE NO. C.A.1 AND C.A. 2*** *respectively to this affidavit.*

6. That the contents of para 4 to 7 of the writ petition are argumentative and shall be replied at the time of argument. However, the notification referred in the answering para darted 07.02.1992 relates to the Punjab and Hariyana Service Rules, and as such, are not applicable in the case of the petitioner."

5. The petitioner has also referred the judgment of ***Haryana Vs. Pyara Singh, AIR 1992 SC 2130.*** The relevant observation is quoted below:-

"So far as the work charged employees and casual labour are concerned, the effort must be to regularize them as far as possible and as early as possible subject to their fulfilling the qualifications, if any, prescribed for the post and subject also to availability of work. If a casual labour is continued for a fairly long spell-say two or three years- a presumption may arise that there is regular need for his services. In such situation it becomes obligatory for the concerned authority to examine the feasibility of his regularization. While doing so the authorities ought to adopt a positive approach coupled with an empathy for the person. As has been repeatedly stressed by this Court security of tenure is necessary for an employee to give his best to the job."

6. According to the date of birth of the petitioner, he would have been retired from the service.

7. In view of the aforesaid facts, the writ petition is allowed. The respondents are directed to pass appropriate orders on the representation of the petitioner within a period of six weeks from the date of presentation of the certified copy of the order treating the service rendered by the petitioner as full length of service and fixing the pensionery benefits considering the petitioners service as full length of service.

8. No order as to costs.

(Rajesh Tandon, J.)

22.02.2006
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